

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

SEAN NICHOLAS RAMSEY,

Plaintiff,

v.

ANNE L. PRECYTHE, et al.,

Defendants.

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No. 4:21-cv-00930-MTS

**MEMORANDUM AND ORDER**

This matter comes before the Court on defendants' motion for an extension of time in which to file an answer (Docket No. 22), and plaintiff's second motion for appointment of counsel (Docket No. 23). For the reasons discussed below, defendants' motion will be granted, and plaintiff's motion denied at this time.

**Background**

Plaintiff is a self-represented litigant who is currently incarcerated at the Potosi Correctional Center. At the time relevant to this case, however, he was an inmate at the Eastern Reception, Diagnostic and Correctional Center (ERDCC) in Bonne Terre, Missouri. On July 28, 2021, he filed a civil action pursuant to 42 U.S.C. § 1983, alleging that he had been denied his First Amendment right to practice his religion while incarcerated at the ERDCC. (Docket No. 1). Along with the complaint, plaintiff filed a motion for leave to proceed in forma pauperis and a motion for appointment of counsel. (Docket No. 2; Docket No. 3).

On January 4, 2022, the Court granted the motion for leave to proceed in forma pauperis, and assessed an initial partial filing fee. (Docket No. 6). Because he was proceeding in forma pauperis, the Court reviewed his complaint under 28 U.S.C. § 1915. Based on that review, the

Court determined that the complaint was subject to dismissal. Rather than dismissing outright, the Court ordered plaintiff to file an amended complaint within thirty days. The Court also denied plaintiff's motion for appointment of counsel.

The Court received plaintiff's amended complaint on January 27, 2022. (Docket No. 7). In it, plaintiff named Chaplain Thomas Reagan, ERDCC Warden David Vandergriff, Director Anne L. Precythe, Assistant Director Jeff Norman, Case Manager Vaugh, Deputy Warden Lorna Black, and Case Manager Nikki Warden as defendants. All were sued in their individual capacities only. As in the original complaint, the amended complaint contained allegations regarding the denial of plaintiff's First Amendment right to practice his religion.

The Court reviewed plaintiff's amended complaint pursuant to 28 U.S.C. § 1915. (Docket No. 11). Based on that review, the Court dismissed the claims against Reagan, Vaugh, and Warden on June 16, 2022. (Docket No. 12). However, the Court directed the Clerk of Court to issue process on defendants Precythe, Norman, Black, and Vandergriff as to plaintiff's claim under the First Amendment. (Docket No. 11). Defendants were served pursuant to the waiver agreement the Court maintains with the Missouri Attorney General's Office.

On August 15, 2022, defendants filed a motion to dismiss. (Docket No. 14). Along with the motion, they submitted a memorandum in support. (Docket No. 15). The Court denied the motion to dismiss on November 7, 2022. (Docket No. 19). Defendants were directed to file an answer within fourteen days. The answer was due on or before November 21, 2022.

Defendants' deadline to submit an answer expired without anything being filed. As such, on December 21, 2022, the Court directed defendants to show cause in writing as to why they have failed to file their answer. (Docket No. 21). Defendants responded that same day by filing a

response to the Court's show cause order and a motion for an extension of time in which to file an answer. (Docket No. 22).

On December 27, 2022, plaintiff filed a second motion for appointment of counsel. (Docket No. 23).

### **Defendants' Show Cause Response and Motion for an Extension of Time**

As noted above, defendants have filed a response to the Court's show cause order of December 21, 2022, and have requested an extension of time in which to submit an answer. (Docket No. 22). In defendants' response, they note that the assistant attorney general previously handling this case has left the office. Additionally, due to an "internal error regarding case assignment," the Court's denial of defendants' motion to dismiss did not get "entered into the office calendaring system," causing the deadline to be missed. Defendants state that a new assistant attorney general is being assigned, and request that the deadline for them to file an answer be extended to January 13, 2023.

Having reviewed the response and the motion for an extension, the Court finds that it should be granted. Defendants shall have until January 13, 2023 to file the previously-ordered answer to plaintiff's amended complaint.

### **Plaintiff's Second Motion for Appointment of Counsel**

Plaintiff has filed a second motion for appointment of counsel. (Docket No. 23). In civil cases, a pro se litigant does not have a constitutional or statutory right to appointed counsel. *Ward v. Smith*, 721 F.3d 940, 942 (8<sup>th</sup> Cir. 2013). Rather, a district court may appoint counsel in a civil case if the court is "convinced that an indigent plaintiff has stated a non-frivolous claim...and where the nature of the litigation is such that plaintiff as well as the court will benefit from the assistance of counsel." *Patterson v. Kelley*, 902 F.3d 845, 850 (8<sup>th</sup> Cir. 2018). When determining

whether to appoint counsel for an indigent litigant, a court considers relevant factors such as the complexity of the case, the ability of the pro se litigant to investigate the facts, the existence of conflicting testimony, and the ability of the pro se litigant to present his or her claim. *Phillips v. Jasper Cty. Jail*, 437 F.3d 791, 794 (8<sup>th</sup> Cir. 2006).

After reviewing these factors, the Court finds that the appointment of counsel is not warranted at this time. In particular, plaintiff has demonstrated, at this point, that he can adequately present his claims to the Court. The Court will entertain future motions for appointment of counsel as the case progresses.

Accordingly,

**IT IS HEREBY ORDERED** that defendants' motion for an extension of time to file an answer to plaintiff's amended complaint (Docket No. 22) is **GRANTED**.

**IT IS FURTHER ORDERED** that defendants shall file an answer to plaintiff's amended complaint on or before **January 13, 2023**.

**IT IS FURTHER ORDERED** that plaintiff's second motion for appointment of counsel (Docket No. 23) is **DENIED** at this time.

Dated this 5th day of January, 2023.

A handwritten signature in black ink, appearing to read 'Matthew T. Schelp', written over a horizontal line.

MATTHEW T. SCHELP  
UNITED STATES DISTRICT JUDGE